
Judiciary Committee

HB 1819

Title: An act relating to sealing felony records that have been vacated.

Brief Description: Changing provisions relating to sealing felony records that have been vacated.

Sponsors: Representatives Lovick, Moeller, Darneille, Flannigan and Chase.

Brief Summary of Bill

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| <ul style="list-style-type: none">Permits a court to seal an applicant's felony criminal record that has been vacated without the applicant demonstrating compelling circumstances. |
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Hearing Date: 2/15/05

Staff: Erik Van Hagen (786-5793).

Background:

Once a convicted felon has completed all the requirements of his or her sentence, including all legal and financial obligations, they may apply to the sentencing court to have their conviction record vacated.

An offender may not have the record of conviction vacated if: (a) there are any criminal charges against the offender pending; (b) the offense was a violent offense or a crime against persons; (c) the offender has been convicted of a new crime; (d) the offense is a class B felony and less than 10 years have passed since the date the applicant was discharged; and (e) the offense was a class C felony and less than five years have passed since the date the applicant was discharged.

A record is vacated by the court by (a) permitting the applicant to change his or her plea from guilty to not guilty; (b) setting aside the guilty verdict; or (c) dismissing the information or indictment against the offender.

Vacated Felony Records

Following the vacation of a criminal record, the applicant may state he or she has never been convicted of that crime for all purposes, including employment applications. The offense may not be used as "criminal history" for purposes of sentencing for a subsequent offense. However, the prior conviction may be used in a later criminal prosecution.

Sealed Records

Courts may seal court files or records pursuant to statute or court rule. Washington Court General Rule 15 (GR 15) authorizes the court to seal records when compelling circumstances are shown. When a record is sealed, it is protected from examination by the public or nonauthorized court personnel. If the file is a paper or microform document, this is done by placing a seal on the file that must be broken in order to gain access. If the file is computerized, it is sealed by limiting access only to authorized court personnel.

Compelling Circumstances as Justification for Sealing Records

In the case of *Personal Restraint Petition of Gentry*, the Washington Supreme Court stated that the requirement of compelling circumstances for sealing records is mandated by the Washington Constitution's requirement for open administration of justice (Article I § 10). Allowing the sealing for records without compelling circumstances may raise constitutional issues. No case law is directly on point regarding whether less than compelling circumstances can be demonstrated when sealing records pursuant to state statute. However, case law suggests that at a minimum, courts will conduct some analysis that would include consideration of the need for sealing the record weighed against the public's interest in open access to the files.

Summary of Bill:

When a conviction record is vacated by a court, the court may seal the file without a demonstration of compelling circumstances. The order to seal may provide for the deletion of the applicant's name in the case index to be substituted with his or her initials.

The bill declares the policy of the state of Washington is to encourage rehabilitation of felons by permitting them to respond to employment inquires without fear of being contradicted by a court file containing a vacated conviction.

Appropriation: None.

Fiscal Note: Requested on February 9, 2005

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.